

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Donald Oreskovich

FINDING OF FACT,
CONCLUSIONS AND
RECOMMENDATION

This matter came on for a prehearing conference before Administrative Law Judge Richard Luis on September 22, 2005 at the Office of Administrative Hearings in Minneapolis.

Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota, 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry ("Department"). There was no appearance by or on behalf of Donald Oreskovich. The record closed at the conclusion of the proceedings on September 22, 2005.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Scott Brener to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUES

Whether it is appropriate to take disciplinary action against Mr. Oreskovich for engaging in unlicensed residential building contractor activity, for violating a prior Cease and Desist Order, and for using another licensee's license number for the fraudulent purpose of obtaining a building permit?

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 3, 2005, a Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges in this matter was mailed to Mr. Oreskovich by first class mail to the following address: Donald Oreskovich, 28347 Henderson Way, Randolph, Minnesota, 55065.

2. The Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges in this matter reads, at page 3:

"Respondent's failure to appear at the prehearing conference may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld."

3. Mr. Oreskovich did not appear at the prehearing conference nor did anyone appear on his behalf. He made no prehearing request for a continuance, nor did he file a Notice of Appearance.

4. The allegations of the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges are deemed proved and are incorporated into these Findings by reference.

5. Department's Exhibit 1, a copy of Mr. Oreskovich's file, including the prior Cease and Desist Order, prior charges and documentary evidence establishing the charges in this matter, was admitted to the record at the hearing and is incorporated into these Findings by reference.

6. The taking of disciplinary action against Mr. Oreskovich is in the public interest.

Based on the Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. § 14.50, 45.027, subds. 6 & 7, 326.84, and 326.91.
2. Any of the Findings more properly termed Conclusions are adopted as such.
3. Donald Oreskovich was given timely and proper notice of the Prehearing Conference in this matter. The Department has complied with all procedural requirements of law and rule.
4. Under Minn. Rule 1400.6000, Mr. Oreskovich is in default as a result of his failure to appear at the scheduled Prehearing Conference.
5. Under Minn. Rule 1400.6000, the allegations and issues set out in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges may be taken as true or deemed proved when a party defaults.
6. Based on the facts set out in the Notice of and Order for Hearing, Order for Prehearing Conference and Statement of Charges, and Exhibit 1, Mr. Oreskovich has violated Minn. Stat. §§ 326.84, subds. 1 and 1a, and 326.91, subds. 1(5) and 1(13).
7. Disciplinary action against Mr. Oreskovich is in the public interest within the meaning of Minn. Stat. § 45.027, subd. 7(a)(1).

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that disciplinary action be taken against Donald Oreskovich.

Dated this 19th day of April, 2011

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Default
RCL/cj